REMARKS

Claims 1-17 and 19-56 are pending.

I. The provisional obviousness-type double patenting rejections

The Office Action includes eight provisional obviousness-type double patenting rejections over various combinations of the following references: U.S. Patent No. 6,913,768; U.S. Patent No. 6,322,819; U.S. Patent No. 6,605,300; U.S. Patent Application No. 11/091,010; U.S. Patent Application No. 11/091,011; U.S. Patent Application No. 10/443,151; U.S. Patent Application No. 11/030,174; and U.S. Patent Application No. 11/774,697.

Applicant requests that the provisional rejections be held in abeyance until allowable subject matter has been identified in this application.

II. The obviousness rejection

Claims 1-17 and 19-56 have been rejected as obvious over U.S. Patent No. 3,344,029 (Berger) in view of U.S. Patent Nos. 2,881,113 (Millman), 2,993,836 (Nash), and 5,322,697 (Meyer). *See* Office Action, pages 39-46.

According to the Examiner, Berger discloses:

- A sustained action oral therapeutic preparation containing a plurality of resilient cores, each consisting of cohesive intimate admixture of a therapeutically active material and an ingestible material resistant to disintegration in the gastrointestinal tract. Office Action, p. 40.
- Variation in the cores between the therapeutic agent and the ingestible material provide varying release rates in the gastrointestinal tract. *Id.*
- Cores coated with alternating coatings of therapeutically active material and ingestible material. *Id.*
- Release of the therapeutically active material that is more evenly distributed over a given time period. *Id.*
- Therapeutically active materials include amphetamines such as dl amphetamine sulfate and dextroamphetamine sulfate. *Id.* at 40-41.

The Examiner acknowledges that Berger does not teach:

- Pulsed enteric release.
- A coating thickness of at least 25 μ or greater than 20 μ.
- Specific amounts of amphetamine salts.
- A specific delayed release component that is pH independent.
- An anionic copolymer based on methacrylic acid and acrylic acid ester and soluble of at a pH of about 5.5 upwards.
- Pharmaceutically active amphetamine salts and immediate release components on one core, and pharmaceutically active amphetamine salts and delayed release components on another core. *Id.* at 41.

The Examiner contends that the "pulsed enteric coating" is inherent to the Berger composition because the claimed and prior art products are identical or substantially identical in structure. *Id.*

According to the Examiner, Millman discloses a composition consisting of amphetamine compounds such as dl-amphetamine salts and dextroamphetamine sulfate added in equal amounts (about 3 to about 6 mg of the mixture). *Id.*

According to the Examiner, Nash discloses an improvement in pharmaceutical release tablets in which a sustained release tablet breaks down uniformly in an aqueous medium independent of pH and/or the presence of enzymes. *Id.* Dextro-amphetamine sulfate is a therapeutic agent used in the tablets. *Id.* at 43.

According to the Examiner, Meyer discloses the use of amphetamine in a tablet that controls appetite, which is formulated so that the active ingredient is released predominately in the ileum. The preferred enteric coating is a pH sensitive polymer that dissolves at a neutral to slightly alkaline pH. A commonly used coating of this nature is Eudragit S. *Id.*

The Examiner contends that it would have been obvious to modify the composition of Berger to have the claimed coating thickness because it is within the art to adjust the thickness to achieve the desired effects and Berger teaches varying the thickness of ingestible material coatings.

Applicants respectfully traverse this rejection. Instant claims 1-17 and 19-56 recite at least two features that are not disclosed or suggested in any combination of the references: (1) a pharmaceutical composition comprising a delayed pulsed release component; and (2) a pharmaceutical composition comprising an immediate release and a delayed pulsed release component. Further, the combination of references teaches that composition having a release profile (i.e., delayed, uniform release) different than the instantly claimed immediate release/delayed pulsed release is optimal. Thus, there was no motivation to modify the art to achieve the claimed composition.

Berger discloses a sustained release composition having a release that is evenly distributed over time. See, e.g., '029, col. 1, ll. 68-69. This means that the release of active agent is close to identical over a prolonged period. See, '029, col. 3, ll. 44-54; col. 4, ll. 30-47; col. 6, ll. 22-35. The sustained release of Berger is not delayed pulsed release. The delayed pulsed release component of the instant claims is coated with an enteric release layer that "delays the release of the pharmaceutical active or drug for a specified time period ... at which time the release of the drug is rapid and complete, i.e., the entire dose is released within about 30-60 minutes ..." Specification, p. 6, ll. 9-13. The sustained release composition of Berger does not include a delay (see, "release after 1 hour" in the tables at '029 col. col. 3, ll. 44-54; col. 4, ll. 30-47; col. 6, ll. 22-35) and does not result in rapid and complete release of the drug (*id.*). Further, Berger does not disclose or suggest a composition including both an immediate release component and a delayed pulsed release component.

Millman does not disclose or suggest a delayed pulsed release component, much less a composition comprising an immediate release component and a delayed pulsed release component.

Nash discloses a sustained release tablet having a release much different than the immediate release/delayed pulsed release of the present invention. According to Nash, the tablets "slowly release the medicinal agent ... at a uniform rate" (col. 1, ll. 27-29) and "we prefer that our tablets possess a breakdown which is nearly a straight line function over a period of about seven hours" (col. 1, ll. 39-41). This is very different, indeed almost opposite, of the two-spike release resulting from an immediate release and a delayed pulsed release composition. Thus, Nash does not disclose or suggest the instantly claimed compositions, nor does Nash provide the motivation to modify the dosage form of Nash, or of any of the other references, to obtain the instantly claimed composition. Further, Nash does not disclose or suggest a dosage form having two components, i.e., an immediate release component and a delayed pulsed release component.

Meyer does not disclose a dosage form comprising amphetamines. Rather, Meyer discloses a dosage form that delays release of nutrients until the ileum is reached and then spreads release throughout a length of the ileum:

> The inventor has discovered ... that increasing luminal viscosity and delaying availability, by the encapsulation of satiety inducing nutrients within enteric coated multi-particulates, the nutrients could be selectively delivered to and spread out over the more sensitive ileum.

'697, col. 5, ll. 20-26; see also, remainder of the '697 patent. Accordingly, Meyer does not disclose or suggest the claimed pharmaceutical composition comprising pharmaceutically active amphetamine salts.

As explained above, no combination of the references discloses or suggests: (1) a pharmaceutical composition comprising a delayed pulsed release component, or (2) a pharmaceutical composition comprising an immediate release component and a delayed release component. Further, no combination of the references discloses or suggests the desirability of such a composition. For these reasons, this rejection should be withdrawn.

CONCLUSION

No new matter has been added by these amendments. In view of the comments and amendments set forth above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

By _____

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